

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1351 of 1998

with

CIVIL REVISION APPLICATION No 1433 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRITI THOMAS RODRIGUES

Versus

THOMAS MARCEL JACOB RODRIGUES

Appearance:

1. Civil Revision Application No. 1351 of 1998
Mr J M Malkan for MS NAYNA V MALKAN for Petitioner
Mr P C Kavina for respondent
2. Civil Revision Application No 1433 of 1998
MR PC KAVINA for Petitioner
Mr J M Malkan for Ms Nayna V Malkan for respondent

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 08/02/99

ORAL JUDGEMENT

RULE.

Both the Revision Applications are heard and decided by this common order.

Revision Application under section 115 of C.P.C. is directed against the order dated 29.6.98 passed by the learned Chamber Judge, City Civil Court, Ahmedabad whereby the learned Judge, while refusing interim alimony to the petitioner-wife, has granted a sum of Rs.1200/- per month for maintenance of the child-Lionel.

2. It appears that petitioner-Mrs.Priti Thomas Rodrigues is a Hindu by birth, whereas respondent-husband Thomas Jacob Rodrigues professes Roman Catholic faith. The wife Priti filed petition for divorce under the provisions of Hindu Marriage Act for dissolution of the marriage. A further prayer was made in alternate for a decree of marriage which was registered at sr.no.2585 of 1992 at page 134 with the Registrar of Marriages, Ahmedabad under the provisions of Section 13 of the Indian Divorce Act, 1889. It is stated that the marriage also took place between the parties at the Church popularly known as 'Premal Jyoti Parish' on 4.12.1994. This application has been contested by the husband on various grounds including the ground that the petition is not maintainable under the Hindu Marriage Act. The respondent-husband also filed application Exh.23 for deciding the jurisdiction issue as preliminary issue. It is not in dispute that the said application has not been decided.

3. The wife-Priti filed application under section 24 of the Hindu Marriage Act praying for interim alimony for herself and the child Lionel aged 4 years. According to the petitioner-wife, the income of the respondent-husband is around Rs.25000/- per month. She has also given certain details to indicate that she is required to spend a sum of Rs.3,900/- per month on the education and other activities of the child. The learned Judge, considering the fact that the petitioner-wife is in employment and is earning Rs.5000/- per month, refused to grant alimony to her. However, the learned Judge assessed the income of the husband as Rs.10,000/- per month and as such awarded Rs.1200/- per month for the maintenance of the child-Lionel.

4. In Civil Revision Application No.1351/98, Mr J M Malkan, learned Advocate appearing for the petitioner contended that the learned Judge has assessed the income

of the respondent-husband on a conservative side. His income is much more than Rs.10,000/- per month and as such looking to the expenses required to be spent on the minor child, the learned Judge ought to have granted not less than Rs.4,000/- for his maintenance. On the contrary, Mr P C Kavina, learned Advocate submits that the respondent-husband does not have income of Rs.10,000/- per month. In Civil Revision Application No.1433/98 filed by the husband, he has challenged the order of granting maintenance to his son. It is submitted by Mr Kavina that the petitioner-husband has been advancing money for the welfare of the child from time to time.

5. I have considered the rival contentions. The petitioner has not produced any documents for the income of the husband as Rs.25,000/-. Hence the version given appears to be exaggerated. In my view, the learned Judge has correctly assessed the monthly income of Rs.10,000/- per month. However, considering the fact that the child has to be given good education and for which the mother has to spend Rs.3,900/- per month, the interim alimony of Rs.1200/- awarded is on the conservative side, which requires to be enhanced as Rs.2000/- per month. At this stage, it is submitted by Mr P C Kavina that this enhancement if at all made, it may be made from the date of this order. I am not impressed by this contention. As I have found that the interim alimony awarded by the learned Judge is on the conservative side, Rs.1200/- is substituted with Rs.2,000/-. So far as the Revision filed by the husband is concerned, I do not find any merit in the same.

6. At this stage, it is brought to my notice that the application Exh.23 is pertains to jurisdiction of the Court which is filed by the petitioner is still pending. It will be appropriate to direct the trial court to decide the said application expeditiously after the arrears of interim alimony is paid.

7. The parties were having some problems with respect to convenient meeting of the father with the minor child. The parties were called and it is agreed that the respondent husband in CRA No.1351/98-Thomas Jacob Rodrigues will be permitted to meet the child on every Sunday between 10 and 12 noon. He is also permitted to take the child out but to take all care that he will not act in any manner which may adversely affect the health and education of the child.

8. In view of the aforesaid, Revision Application

No.1351/98 is partly allowed and the impugned order of the Chamber Judge dated 29.6.1998 is modified to the extent that the figure Rs.1200/- per month awarded for the maintenance of the minor son-Lionel is substituted to Rs.2,000/- per month. Revision Application No.1433/98 stands disposed of.

Rule made absolute to the aforesaid extent.

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msp.